

**STATE OF INDIANA
BEFORE THE ALCOHOL & TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
GOOD OIL CO., INC.)	PERMIT NO. DL50-27654
203 N. MAIN ST.)	
CULVER, IN 46511)	
Applicant		

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Good Oil Co., Inc., ("Applicant") 203 N. Main Street, Culver, IN 46511, permit number DL50-27654, is the applicant for the issuance of a Type 115 Alcohol and Tobacco Commission dealer permit. The Applicant was assigned to the Alcohol Beverage Board of Marshall County ("Local Board"). The Local Board held a hearing on April 5, 2011 and voted 3-1 to deny the application. The Alcohol & Tobacco Commission ("Commission") upheld the Local Board decision in a 4-0 vote on April 19, 2011.

The Applicant filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge N. Davey Neal ("Hearing Judge"). An appeal hearing was held on November 17, 2011 ("Appeal Hearing") and at that time, witnesses were sworn, testimony was given and the matter was taken under advisement. The Hearing Judge, having read the typed transcript and documents from the Local Board Hearing, the evidence and testimony submitted during the Appeal Hearing and the contents of the entire ATC file, and having taken official notice of the same as well as the codes and standards adopted by this State, now tenders his Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. PROCEDURAL HISTORY

1. Good Oil Co., Inc. ("Applicant") applied for issuance of a Type 115 Alcohol and Tobacco Commission dealer permit ("permit").
2. The Local Board held its hearing in Marshall County, Indiana on April 5, 2011. The Applicant was present at the hearing.
3. Three members of Local Board voted to deny the renewal. The Local Board member

representing the Commission voted to approve the permit application.

4. The Applicant filed a timely Notice of Appeal to the Local Board's Decision.
5. On November 17, 2011, the Hearing Judge conducted a hearing on the Applicant's appeal of the denial of the permit application.

III. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this case:
 1. Weston Good, Good Oil Co., Inc.
 2. Tim Redshaw, Good Oil. Co., Inc.
- B. The following individuals testified before the Local Board against the Applicant in this cause:
 1. Rod Jamison, Town & Country Liquor
- C. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
 1. None.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
 1. None.

IV. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
 1. Tim Redshaw, Good Oil Co., Inc.
- B. The following evidence was introduced and admitted before the Commission in Favor of the Applicant in this cause:
 1. None.
- C. The following individuals testified before the Commission against the Applicant in this cause:
 1. None.
- D. The following evidence was introduced and admitted before the Commission against

the Applicant in this cause:

1. None.

V. FINDINGS OF FACT

1. Paragraphs I-IV are hereby incorporated by reference.
2. The Applicant is applying for the aforementioned permit. (Local Board Hearing; ATC File).
3. Applicant operates a number of gas/convenience store business in Indiana. The premises in question operates as Culver Express. (Appeal Hearing).
4. The Applicant's business is in a commercial area on Main Street in Culver. (Appeal Hearing; ATC File)
5. The Applicant's business has never been cited by Excise for any administrative and criminal violations (Appeal Hearing; ATC File)
6. The Applicant's business has been in existence for several decades. (Appeal Hearing)
7. The sole remonstrator provided testimony not against Applicant, but rather inquiring about why this jurisdiction would have any permits available on quota when the population had recently dropped. (Local Board Hearing).
8. The Local Board did not elicit any testimony, from Local Board members or remonstrators, that Applicant is unfit to hold the permit or that there was any defect in Applicant's permit. (Local Board Hearing).
9. The Applicant is a member of the Indiana Board of Responsible Retailers. This group has established standards for controlling the access of alcohol and tobacco to minors. (Local Board Hearing; Appeal Hearing).
10. The Applicant, at other locations where it holds an alcohol permit, uses stricter identification policies for the purchase of alcohol and tobacco than is required by state statute. (Appeal Hearing).
11. Any Finding of Fact may be considered a Conclusion of Law, if the context so warrants.

VI. CONCLUSIONS OF LAW

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.

3. The ATC is commissioned to act upon proper application. *Id.*
4. The Hearing judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5
5. The Hearing Judge may consider as evidence all documents, codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e)
6. The Hearing Judge may consider as evidence all documents in the ATC file, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a)
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceedings. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d)
8. The Commission has discretion to grant or refuse a Permit application. Ind. Code §§ 7.1-3-19-1, *et seq.*
9. The Commission shall consider the acts of the applicant, or its employees or agents, in determining the moral character and repute of the Applicant. 905 IAC 1-27-1.
10. The Commission may infer the esteem with which the Applicant is held by the community from police reports, evidence submitted at Commission proceedings, and information contained in public records. *Id.*
11. The Commission is required to follow the recommendation of the Local Board when the Local Board votes to deny an application by a majority vote, unless the recommendation is arbitrary, capricious, contrary to a constitutional right, outside statutory jurisdiction, without observance of required procedures, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.
12. The Applicant contends the Local Board's decision not to renew the Permit was arbitrary and capricious, and unsupported by substantial evidence.
13. An administrative agency action is arbitrary and capricious "where there is no reasonable basis for the action." *Ind. Civil Rights Comm'n v. Delaware County Cir. Ct.*, 668 N.E.2d 1219, 1221 (Ind. 1996).
14. Substantial evidence is the standard to be applied by the Commission in review of the record of proceedings. Substantial evidence requires something more than a scintilla, and less than a preponderance of evidence; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Indiana Alcoholic Beverage Comm. v. River Road Lounge*, 590 N.E. 2d 656, 659 (Ind. App. 1992); see also *Roberts v. County of Allen*, 773 N.E.2d 850, 853 (Ind. App. 2002). Substantial evidence is more than speculation or conjecture. *Id.*
15. The Applicant is a fit and proper applicant, has maintained a reputation for decency

and law obedience, and is well qualified to hold an alcoholic beverage permit under Indiana Law. 905 IAC 1-27-1; Ind. Code 7.1-3-19-10

16. The initial findings of the Local Board were: arbitrary and capricious and unsupported by substantial evidence.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the findings of the Local Board to deny this application were not based on substantial evidence and must be REVERSED.

It is further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the Appeal Hearing was in favor of the Applicant, and the application of Good Oil Co., Inc. for the issuance of permit #DL50-27654, is APPROVED.

Dated: November 17, 2011

N. Davey Neal
Hearing Judge